supra; *Brakely* v. *Sharp*, 10 N. J. Eq. 206. The easements were held not reasonably necessary and therefore not implied, the court following Washburn's test of necessity; "the question whether the grantee might at a reasonable expense, provide for himself an enjoyment of a similar easement." WASHBURN, EASEMENTS (4th Ed.) 107. The correctness of this result may well be questioned. The test of expense was not intended to be, nor is it, applicable to easements implied under partition deeds, where the property is taken with all the rights, privileges and incidents inherently attached to the property conveyed. The better rule is that the property is to be enjoyed after partition in the same manner as before, and that the parties to such partition "take their respective proportions of the estate in the same condition and subject to the same advantages and disadvantages under which the ancestor held." *Burwell* v. *Hobson*, 12 Gratt. (Va.) 322, 329.

EMINENT DOMAIN—STREETS—CONDEMNATION-TRESPASS.—A city's charter provided for the condemnation of land for street purposes. By virtue of this authority, the board of commissioners adopted a resolution condemning certain lands to be used as a public street, the resolution providing for the appointment of one appraiser by the city, another by the landowner, and a third selected by these two. The requisite steps were taken by the city but the landowner refused to appoint an appraiser and appealed to the Superior Court. The city then selected appraisers, who fixed the damages and the defendants entered on the land and opened and laid out a street. The landowner had them indicted for criminal trespass. *Held*, that the entry of the defendants was rightful. *State* v. *Jones, et al.* (1905), — N. C. —, 52 S. E. Rep. 240.

The determination of the question of the necessity of appropriating lands for public purposes through the power of eminent domain calls into exercise political and not judicial powers; *Zimmerman* v. *Canfield*, 42 Ohio St. 463; *McMicken* v. *Cincinnati*, 4 Ohio St. 394; *Giesy* v. *Railroad Co.*, 4 Ohio St. 308; *People* v. *Smith*, 21 N. Y. 595; and the method of taking being within the exclusive control of the legislature limited by the constitution, the courts cannot help the injured landowner until the question of compensation is reached unless some statutory right is invaded. *People* v. *Adirondack Ry. Co.*, 160 N. Y. 225. The majority of the judges justify the proceedings on the part of the city to appoint all the appraisers on the ground that the land "stood condemned" as soon as the ordinance was passed and the plaintiff here could not be allowed to obstruct the proceedings by refusing to appoint an appraiser as provided for by the city's charter. *Johnson* v. *Rankin*, 70 N. C. 550; *Railroad* v. *McCaskill*, 94 N. C. 746; *State* v. *Lyle*, 100 N. C. 497. The entry of the officers then was not a trespass. CONNOR, J., dissented on this latter point in what seems to be the better opinion. The exercise of the power of eminent domain is in derogation of the common right and the statutory provisions must be strictly followed. *Stewart* v. *Wallis*, 30 Barbour 344; *Fitch* v. *Commissioners*, 22 Wendell 132; *White* v. *Ry. Co.*, 64 Miss. 566; *State* v. *Jersey City*, 54 N. J. L. 49; *Paret* v. *City of Bayonne*, 39 N. J. L. 559; and in the principal case the statutory provisions for assessing the compensation not being followed, the land did not "stand condemned" and the entry of

the officers was a trespass. *Stewart* v. *Wallis,* 30 Barbour 344; *State* v. *Jersey City,* 54 N. J. L. 49; *Paret* v. *City of Bayonne,* 39 N. J. L. 559.

EVIDENCE—WIFE AS WITNESS AGAINST HUSBAND.—Where it was sought to introduce the testimony of a wife against her husband indicted for the murder of his infant child, *held* the wife was not a competent witness. *State* v. *Woodrow* (1905), — W. Va. —, 52 S. E. Rep. 545.

The child, which was fourteen months old, was sitting on his mother's lap and the same shot killed the child and injured the mother. There is a strong dissenting opinion in the case. It is a well recognized rule in criminal actions that the wife shall not be compelled to testify against her husband. An exception exists where the offense is alleged to have been committed by him upon her. It is difficult to determine exactly what offenses are included in this exception. Where the act is one of personal violence to the wife, she is a competent witness. *Whipp* v. *State,* 34 Ohio St. 87. It has been held that the wife is competent where the husband is indicted for bigamy. *State* v. *Sloan,* 55 Ia. 217, also for adultery. *Lord* v. *State,* 17 Neb. 526. Contra, *People* v. *Quanstrom,* 93 Mich. 254. *Compton* v. *State,* 13 Tex. App. 271. In *Bassett* v. *United States,* 137 U. S. 496, it was held that the wife was not a competent witness against her husband on trial for polygamy. The weight of authority seems to be that the offense in the main case was not upon the wife, within the meaning of the exception, and that the case was rightly decided.

GARNISHMENT—JURISDICTION—SITUS.—Deer, living in Alabama, sued there for wages earned and payable there. Defendant alleged in defense that it had been charged as his garnishee for these wages in a suit against him in Florida, with notice of which he was served by publication as required by the Florida statutes, and that it had paid the garnished sum into court before this suit was brought. The railroad company was permanently located in business in Florida, and liable to be sued there, but apparently not incorporated under the laws of that state. The Supreme Court of Alabama considered the payment under the garnishment to be no defense, because the Florida court had no jurisdiction. On appeal to the United States Supreme Court, this judgment is reversed. *Louisville & N. R. R. Co.* v. *Deer* (1906), 26 Sup. Ct. Rep. 207.

The opinion is short and is based entirely on *Harris* v. *Balk,* 198 U. S. 215, 49 L. ed. 10, 23, 25 Sup. Ct. Rep. 625, reviewed 4 MICH. LAW REVIEW 57. This case seems to settle the question as to jurisdiction in garnishment when the garnishee is a foreign corporation.

MASTER AND SERVANT—CONTRACT OF EMPLOYMENT—WHETHER FOR INDEFINITE PERIOD—DAMAGES.—Defendant contracted to employ plaintiff as foreman at $125 per month "for the time the work undertaken by the defendant at Manila should last," and without cause refused to permit him to enter upon such service. The court having previously considered (in 31 Wash. 177) that a good cause of action was stated, the question now is as to the admissibility of evidence, showing the length of time that the work at Manila